IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 207 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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PATEL SHAILESHKUMAR CHATURDAS - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR HARNISH V DARJI for Appellant(s) : 1,
MR HL JANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/11/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.The present appeal has been filed by the present appellant-original accused, who has

been convicted and sentenced to suffer imprisonment for life and to pay fine of Rs.1000/-, in default, to suffer further 6 months SI for the charge under Sec.302 of IPC and also to suffer RI for one year and to pay fine of Rs.1000/-, in default, to suffer further 2 months SI for the charge under Sec.498-A of IPC by the learned Addl. Sessions Judge, Mehsana, Camp at Patan, vide judgment and order dated 10th February, 1999 passed in Sessions Case No.158 of 1998.

2. The case of the prosecution in short is that a telephonic message was received by the maternal uncle of the victim from the relatives of the appellant-accused about the unnatural death of the victim Ashaben. He in turn informed this to father and other relatives of Ashaben. They then went to Village Bhunav, Taluka Unjha at the matrimonial house of Ashaben where they saw Ashaben lying on the floor in the middle of the main room. Since they suspected the death to be an unnatural death, maternal uncle of

Ashaben went to Unjha Police Station and gave an application at Ex.24 raising doubt about the death of Ashaben and it has been numbered as Accidental Death No.8 of 1998. As P.I., who was investigating another case at Village Mahirvad, received a wireless message, he along with Dy.S.P., Mr.N.R.Patel went to the scene of offence i.e. the residential house of the appellant and deceased at Village Bhunav. As it was not a natural death, he called the panchas, prepared inquest panchnama there itself and made arrangements to send dead body of Ashaben for performing post mortem. Meanwhile, father of Ashaben lodged a complaint (Ex.34) with Unjha Police Station against the present appellant and it has been registered as Unjha Police Station I.C.R.No.89 of 1998 for the offences punishable under Secs.302 and 498-A of IPC and the Investigating Officer started investigation. He recorded statements of various witnesses and made a search for the accused and accused was arrested on 30-4-1998

on completion of legal formalities i.e. preparing arrest panchnama, etc. and the muddamal has been recovered at the instance of accused. Arrangements were also made to send the muddamal to FSL and on receipt of FSL and post mortem reports, same were kept in investigation file. Upon completion of investigation, charge sheet was submitted against the accused in the Court of learned Judicial Magistrate (First Class), Unjha.

3. As the offences alleged against the accused were exclusively triable by the Court of Sessions, learned J.M.F.C, Unjha, committed the case to the Court of Sessions at Mehsana where it was numbered as Sessions Case No.158 of 1998 and same was transferred to the Court of learned Addl. Sessions Judge, Mehsana, Camp at Patan for disposing of the same on merits.

4. Upon presentation of the accused, charge was framed against the appellant at Ex.3. The accused pleaded not guilty to the charge and prayed of trial and, therefore, to prove the

case against the accused, the prosecution examined 11 witnesses in all and also relied on various documentary evidence. On submission of closing purshis by the learned APP, learned Addl. Sessions Judge, recorded further statement of the accused under Sec.313 of the Code of Criminal Procedure. Thereafter, on hearing the learned advocates appearing for the respective parties, learned Addl. Sessions Judge, delivered the impugned judgment, whereby the appellant was convicted and sentenced to suffer for life which is giving rise to the present appeal.

7. We have heard learned counsel for the appellant, Mr.Harnish Darji and learned APP, Mr.H.L.Jani at length.

8. The case of the appellant is of total denial as well as of alibi. It reflects from the evidence and the contentions raised by the learned counsel for the appellant into the court below as well as this Court that it is a case of the appellant from very beginning that at the time of incident, he and his

father both were not at home but were away in their agricultural field and in the morning when they came to know of the incident, they came to their residence. In the meanwhile, mother of the appellant had also called a male person and relatives and in turn, they informed the maternal uncle of Ashaben. In short, according to the learned counsel for the appellant, the appellant is totally innocent and has been falsely involved in the offence in question. It is also contended that he was not present at the time of incident. He therefore sought to set the appellant at liberty by quashing and setting aside the impugned judgment and order of conviction and sentence.

9. The case of the otherside is that it is a case based on circumstantial evidence and prosecution is able to prove all the links in the chain of circumstances beyond reasonable doubt and, therefore, it is requested that the impugned judgment and order of conviction may not be interfered with.

10.We have gone through the impugned judgment delivered by the Court below and have given thoughtful consideration to the contentions raised by the learned counsel for the respective parties.

11.It reflects from the evidence and the contentions raised by the learned counsel for the respective parties that the appellant and the victim Ashaben were husband and wife. Their marriage span is of less than seven years. Initially their relations were cordial but as appearance of Ashaben was not to the satisfaction of the appellant accused, quarrel started taking place between them. It was in the mind of the victim that the appellant had an illicit relation with a lady named Minaben and therefore, their relations were not becoming cordial two years prior to the incident and one fine morning, the appellant took Ashaben with him in the ST bus, dropped her at the bus-stand leading to her parental Village and he proceeded towards Visnagar. This is revealed from the

documentary evidence i.e. application Ex.13 submitted by the appellant accused before the District Superintendent of Police of Matrimonial Cell against the victim and her relatives. It appears that in pursuance of said application, concerned PSI called Ashaben and her relatives and her statement was recorded on 9-4-1998 at Ex.28. Thereafter on 20-4-1998 also, her statement was recorded at Ex.29.

12.From the above, it is established that prior to the incident, the relations between the appellant and the victim were not cordial and therefore, victim was residing at her parental house. However, due to intervention of concerned Police Officer, issue was amicably settled and the appellant took Ashaben to the matrimonial house on the same day.

13.As regards dropping Ashaben at her parental house, it is the defense of the accused that as he was going to Visnagar, his wife had accompanied him and hence, she was dropped

there. However, rest of the facts is not in dispute.

14. Facts however remain that incident in question had taken place on the night of 26th and 27th April, 1998 more particularly at 1.00 a.m. on 27th April, 1998. The facts of the incident in question having taken place in the matrimonial house of Ashaben as well as of appellant and the dead body of Ashaben lying in the middle of the main room are not in dispute. This gets support from the inquest panchnama, panchnama of scene of offence and evidence of other witnesses. It is also required to be noted that early in the morning, as the unnatural death of the deceased was known to the people, many people have gathered there and, therefore, it is clear that incident in question has taken place during night hours in the matrimonial house of the appellant and the victim. It is established that on 20th April, 1998, there was no dispute between them as all the disputes were amicably resolved but within 5-

6 days, this incident has taken place. However, it is the specific case of the appellant from very beginning that he was in the agricultural field with his father.

15.We have gone through the evidence of mother of the appellant, Paliben, who has been examined as Prosecution Witness No.4 at Ex.21. Although she has not supported the case of the prosecution and has been declared as hostile, contradiction in her testimony has been proved by the prosecution through the evidence of Investigating Officer wherein it has been established that her son was at home when the incident had taken place. It is required to be noted that father of the appellant has not been examined by the prosecution. The appellant also did not step into the witness box to give evidence on oath.

16.All the aforesaid aspects have been dealt with in detail in the impugned judgment by the court by coming to the conclusion that the dispute was settled between the appellant

and the victim. However, within few days of settlement, the absence of the husband at the residential house and remaining in agricultural field or sleeping outside the house is not be acceptable in the natural course. Moreover, the appellant has not come out with any specific case as to what had happened to her during the night hours. They have also not explained the injury sustained by the victim which resulted into offence under Sec.302 and, therefore, an adverse inference can be drawn against the appellant. It may be reiterated that the aforesaid fact is reflected from the application Ex.13 as well as from the statements of the victim recorded by the Police Officer at Exs.28 and 29. It appears from the inquest panchnama and panchnama of scene of offence that the dead body of the deceased was lying completely covered on the floor in the middle of the main room and, therefore, it cannot be said that incident in question has taken place on the floor of the room since the cot was lying

in the room itself and also since mother of the appellant has also specifically deposed that she was sleeping on the cot.

17.The injury which has been received by the victim has been proved by the prosecution by way of oral evidence of Dr.N.R.Patel, P.W.10 at Ex.33. The prosecution has proved the post mortem note Ex.34 through the evidence of this doctor.

18.It is established from the above referred evidence of Dr.N.R.Patel and the P.M. note Ex.34 that death of the deceased was homicidal. It is not the case of the appellant even before the court below or this Court that it was not a homicidal death but it was a natural death or a suicidal. Even cause of death as shown by the panel doctor is “death due to `Asphyxia' due to strangulation”. External injury has been narrated by the panel doctor in Column No.17 of the post mortem note while internal injury has been shown in column No.20 of the said note. The prosecution is able to prove the

corresponding injury also by way of leading oral evidence of Dr.Patel.

19.The court below has also considered all the above aspects in detail including the inquest panchnama and came to the conclusion that death of the deceased was homicidal. Since said aspect has not been challenged by the appellant either into the court below or this Court, we are not discussing further in that regard and we also hold that it is a case of homicidal death as we have stated above which has been taken place in the matrimonial house of the appellant and victim during night hours in their bed room. In view of the above, asking the prosecution to produce eye witness is out of question as the incident has been taken place in the four corners of the room wherein the young woman aged about 25 years has been mercilessly killed by her husband and thereafter her dead body has been placed on the floor and her relatives were informed. The defense which they have taken or the line of defense they have selected is

not convincing in view of evidence on record.

20.We are therefore of the opinion that the prosecution has been able to prove all the links in the chain of circumstances starting from the date of marriage and thereafter from the application Ex.13, statements of the victim recorded by the concerned Police Officer at Exs.28 and 29 and thereafter, from the oral evidence of various witnesses. As no cut mark injuries were found on any part of the body of the appellant by the nail of the victim while resisting the incident from being happening, Court cannot come to the conclusion that it is not a case of homicidal death. It is also required to be noted that she is a woman from the weaker section of the Society and the appellant being her husband can easily overpower her and same has been established from the evidence of doctor and post mortem note Ex.34. However, there is no explanation putforwith by the otherside as to what happened to her. Their defense or alibi is

not acceptable in view of ample evidence on record.

21. Learned counsel for the appellant has lastly raised the contention that the appellant has already undergone almost 9 years and 9 months and hence, some mercy be shown to him.

22. We have taken into consideration the above referred contention of the appellant. However, looking to the seriousness of offence having proved against the appellant beyond reasonable doubt by the prosecution of driving away mercilessly of the victim wife by the husband from her matrimonial home and then making her to stay at parental home for two years and thereafter by showing false promise and affection, she has been brought back to her matrimonial home and within 5-6 days, she has been mercilessly killed by her husband and, therefore, we are not inclined to show any mercy towards him.

23. In view of the above, we are not inclined to interfere with the judgment and order of conviction and sentence delivered by the

court below. We are therefore of the opinion that the appeal of the appellant is required to be dismissed.

24.The Appeal is accordingly dismissed.

(R.P.DHOLAKIA,J.)

(K.S.JHAVERI,J.)

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